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*Counsel for Proposed Lead Plaintiff and
Proposed Lead Counsel for the Class*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TED SCHLATRE, Individually
and on Behalf of All Others Similarly
Situating,

Plaintiff,

v.

MARATHON DIGITAL HOLDINGS, INC.
f/k/a MARATHON PATENT GROUP,
INC., MERRICK D. OKAMOTO,
FREDERICK G. THIEL, and SIMEON
SALZMAN,

Defendants.

Case No. 2:21-CV-02209-RFB-NJK

CLASS ACTION

**RESPONSE OF EVAN DANA TO
COMPETING MOTIONS FOR
APPOINTMENT AS LEAD PLAINTIFF
AND APPROVAL OF SELECTION OF
COUNSEL**

1 Proposed Lead Plaintiff Evan Dana (“Mr. Dana”) respectfully submits this response to the
 2 pending motions for appointment as Lead Plaintiff and approval of selection of Lead Counsel in
 3 the above-captioned securities class action (the “Action”).

4 On February 15, 2022, Mr. Dana filed a motion for appointment as Lead Plaintiff and
 5 approval of selection of Lead Counsel for the Class. *See* ECF No. 10. On that date, Cory Jay
 6 Wiedel (“Mr. Wiedel”) (ECF No. 11); Carlos Marina (“Mr. Marina”) (ECF No. 12); Tad Schlatre
 7 (ECF No. 13); and Pathma Venasithamby (ECF No. 14), also filed competing motions for
 8 appointment as Lead Plaintiff and approval of selection of Lead Counsel.

9 The Private Securities Litigation Reform Act (“PSLRA”) provides that the “court shall
 10 adopt a presumption that the most adequate plaintiff” is the movant with “the largest financial
 11 interest in the relief sought by the class” that “otherwise satisfies the requirements of Rule 23 of
 12 the Federal Rules of Civil Procedure.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). Having reviewed the
 13 competing motions and supporting papers provided by the other movants seeking appointment as
 14 Lead Plaintiff, it appears that Mr. Marina possesses the “largest financial interest in the relief
 15 sought by the class” as required by the PSLRA and otherwise satisfies the requirements of Rule
 16 23 of the Federal Rules of Civil Procedure.

17 The only other movant with a larger loss than Mr. Dana appears to be Mr. Wiedel.
 18 However, a simple review of the transaction history submitted to the Court (ECF No. 11-3)
 19 indicates the timing of Mr. Wiedel’s purchases of Marathon securities render him atypical within
 20 the meaning of Rule 23, and likewise subjects him to a disqualifying unique defense. Indeed, *all*
 21 of Mr. Wiedel’s purchases of Marathon securities occurred on November 15, 2021, *after* the
 22 investing public learned of Marathon’s malfeasance.¹ Given the timing and magnitude of Mr.
 23 Wiedel’s post-disclosure transactions, he would not be entitled to the presumption of reliance
 24 established in *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988), and therefore exposed to fatal defenses

25
 26 ¹ Here, the corrective disclosure regarding the pending SEC investigation was released in a
 27 quarterly report on Form 10-Q (ECF No. 1, ¶ 42), which was filed with the SEC on November
 28 15, 2021 and accepted at **6:03AM ET**, before market trading hours. *See*
<https://www.sec.gov/Archives/edgar/data/0001507605/000149315221028278/0001493152-21-028278-index.htm>).

not generally faced by other Class members. *See, e.g., In re Hebron Tech. Co., Ltd. Sec. Litig.*, No. 20 CIV. 4420 (PAE), 2020 WL 5548856, at *8 (S.D.N.Y. Sept. 16, 2020) (rejecting lead plaintiff movant with similar trading pattern and concluding “that the cottage industry of issues surrounding [movant]’s purchase of [defendant] shares would saddle, or at least potentially saddle, his claims with unique defenses”); *Lundy v. Ideanomics, Inc.*, No. 20 CIV. 4944 (GBD), 2020 WL 7389027, at *3 (S.D.N.Y. Dec. 16, 2020) (rejecting lead plaintiff movant as “subject to a unique defense because he purchased *all* his class period shares after the June 25, 2020 partial corrective disclosures”) (*italics in original*). Mr. Wiedel should be disqualified from Lead Plaintiff consideration.

Accordingly, were the Court to determine that Mr. Marina is incapable or inadequate to represent the Class in this litigation for any reason, with Mr. Wiedel eliminated from consideration, Mr. Dana would be the “next in line” and stands ready, willing, and able to serve as Lead Plaintiff of the Action. Mr. Dana reserves any and all rights to participate in any recovery in the Action.

DATED: March 1, 2022

Respectfully submitted,

/s/ Don Springmeyer

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Additional Counsel for Proposed Lead Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2022, a true and correct copy of this **RESPONSE OF EVAN DANA TO COMPETING MOTIONS FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF SELECTION OF COUNSEL** was served via the United States District Court CM/ECF system on all parties or persons requiring notice.

By: /s/ Don Springmeyer

Don Springmeyer